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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,959	11/21/2003	Paul J. Flanningan	59010US002	3577

32692 7590 07/25/2006

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EXAMINER

PATEL, NIHIR B

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/719,959	FLANNINGAN ET AL.	
	Examiner	Art Unit	
	Nihir Patel	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05.04.2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 23 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 23 depends from claim 23. Therefore, it is being objected as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-4, 13, 14, 16-19 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gleason et al. (US 6,016,804) in view of Resnick (US 6,701,925).

5. **Referring to claims 1-4, 13, 14, 16-19, 22 and 23**, Gleason discloses the applicant's invention as claimed with the exception of providing a fluid communication component that is separately from the supporting portion of the face-piece insert. Resneck discloses an apparatus that does provide a fluid communication component that is separately from the supporting portion of the face-piece insert (**see figure 7**). Therefore it would have been obvious to modify Gleason's invention by providing a fluid communication component that is separately from the supporting portion of the face-piece insert as taught by Resneck so that it is impervious to fluid flow.

6. **Referring to claims 5-7, 9-12, 15 and 20**, close reading of the applicant's specification reveals that these components have always been close tolerance or critical elements therefore applicant's designation of critical element does not carry any patentable weight. It should be noted that applicant's specification alludes to separate manufacturing of critical elements and non-critical elements (**prior to assembly**) emphasis added as the novel aspect of the applicant's invention.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gleason et al. (US 6,016,804) in view of Freund (US 5,592,937).

8. **Referring to claim 8**, Gleason discloses the applicant's invention as claimed with the exception of providing a fluid communication component that is made from similar polymeric materials. Freund discloses a respirator mask with stiffening elements that does provide a fluid communication component that is made from similar polymeric materials. Therefore it would have been obvious to modify Gleason's invention by providing a fluid communication

component that is made from similar polymeric materials as taught by Freund in order to properly fit the user's face.

9. Claim **21** is rejected under 35 U.S.C. 103(a) as being unpatentable over Gleason et al. (US 6,016,804) in view of Fecteau et al. (US 6,497,232).

10. Referring to claim **21**, Gleason discloses the applicant's invention as claimed with the exception of using the fusing process to assemble the supporting portion to the fluid communication component. Fecteau discloses a respirator headpiece and release mechanism that states that any process may be used to assemble the supporting portion to the fluid communication component (**see column 4 lines 1-10**). Therefore it would have been obvious to modify Gleason's invention by using the fusing process to assemble the supporting portion to the fluid communication component as taught by Fecteau in order to prevent the user from breathing in bad air.

11. Referring to claims **8 and 21**, a close reading of the applicant's specification (**page 7 lines 15-25**) reveals that the applicant has not established any criticality on why the supporting portion and the fluid communication component must be fused together and therefore it would be obvious to one in the ordinary skill of the art to use the fusing process or any other process as stated by Feteasu to assemble the two component.

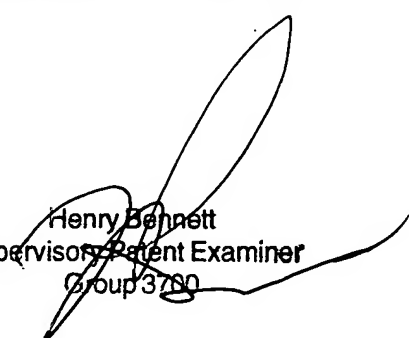
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nihir Patel
Art Unit 3743



Henry Bennett
Supervisor Patent Examiner
Group 3743